IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 302 OF 2006

1. Komal Daya Nayak
and Anr. ....Petitioners.

V/s

State of Maharashtra
(Assistant Commissioner of
Police, Anti Corruption
Bureau Mumbai) ....Respondent.

Mr. Shirish Gupte with Shri A.P. Mundargi for the petitioners.

Mr. S.R. Borulkar, PP along with Ms. Rajeshree M. Gadhavi, APP for the State.

ALONG WITH
CRIMINAL APPLICATION NO. 298 OF 2006

Rajendra Prabhakar Padte ...Applicant.

V/s

The State of Maharashtra
(Assistant Commissioner
of Police, Anti Corruption
Bureau, Mumbai) ...Respondent.

Mr. Ganesh Gole for the applicant.

Mr. S.R. Borulkar, PP along with Ms. Rajeshree M. Gadhavi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 23rd January, 2006

P.C.:

1. Heard the learned Counsel for the Petitioners and the learned PP for the State.

2. The learned Counsel for the petitioners seeks the ad-interim order of anticipatory bail on the ground that the Petitioners have an apprehension that they are likely to be arrested in connection with the offence which is registered under the provisions of the Prevention of Corruption Act vide C.R. No. 3 of 2006 under section 13(1)(e) and 13(2) of the Prevention of Corruption Act read with section 109 of the Indian Penal Code.

3. Shri Borulkar, the learned PP appearing on behalf of the State has raised a preliminary objection regarding the maintainability of the present application for anticipatory bail on the ground that it is filed directly in the High Court and, therefore, the present application should not be entertained as the Petitioners ought to have moved the Hon'ble Sessions Court for Greater Bombay and if their application is rejected should have approached this Court.

4. The learned Counsel for the petitioners submits that certain directions have been given by this Court and in view of the directions given by this Court, he had moved this application directly to this court. He has invited my attention to the order passed by Shri Justice A.M. Khanwilkar in Writ Petition No. 2564 of 2004 which was filed in this Court as also before the Division Bench of this Court in Writ Petition No.64 of 2006 filed by journalist Ketan K. Tirodkar.

5. I am unable to accept the submission made by the learned Counsel appearing on behalf of the petitioners so far as the first Petition being Writ Petition No.2564 of 2004 is concerned in which the order is passed by Shri Justice A.M. Khanwilkar on 13/1/2005 the said Writ Petition appears to have been filed by the husband of the present Petitioner. In the said matter, this Court has granted rule and has stayed further proceedings in terms of prayer clause (d) of the said Petition and only clarification was granted that the investigation against the present applicant i.e. the husband of the petitioner No.1 herein by the Anti Corruption Bureau was not the subject matter of the present complaint and that would not preclude the investigation into the said offence. So far as the other Writ Petition viz. Writ Petition No. 64 of

2006 is concerned, in the said Petition, a grievance was made by the petitioner i.e. one Ketan K. Tirodkar who is said to be the journalist that the orders passed by the Division Bench had not been complied with and protection was not given to him. The Division Bench in the said matter, therefore, directed the Commissioner of Police to take appropriate steps and grant protection to the said petitioner viz. Ketan K. Tirodkar. The apprehension expressed by the learned Counsel for the petitioners, therefore, is patently unfounded. It is further clarified that the Sessions Court, if an application is preferred by the petitioners, will not be influenced by any orders passed by this Court in other proceedings and shall decide the application of the petitioners on its own merits and in accordance with law. If an application is made, the Sessions Court may consider the question of granting ad-interim relief and if the application is directly presented without lodging the same in the Court, appropriate orders may be passed.

6. With the above directions, the applications are allowed to be withdrawn with liberty to approach the Sessions Court. Filing of the affidavit may be dispensed with for the time being.

7. All concerned to act on the copy of this order duly authenticated by the registry.

V.M. KANADE, J.